IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.496 OF 2000
WITH
CIVIL REVISION APPLICATION NO.1339 OF 2000

Shri Dnyadeo Vithal Chandkar(deceased)
Through legal heirs.
Smt.Venubai D. Chandkar & Anr. ..Appellants.

V/s.

Shri Genba A.Kalokhe(deceased)
through LRs. & Ors. ..Respondents.

Mr.Rajesh More for appellants.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 6, 2006.

P.C. :

1. Heard counsel for the Appellants. None appears for the respondents though duly served.

2. As short question is involved, both the appeal as well as Civil Revision Application are taken up for final disposal. In terms of order issuing notice to respondents, both the matters have been listed in the final hearing board under caption "final disposal". None appears for the respondents. No reply has been filed opposing this proceedings.

3. Briefly stated, the appellant is the original tenant in the suit instituted by the respondents.

The suit has been decreed by Judgment and order dated 11th November, 1992 being Regular Civil Suit No.1381 of 1986 passed by the Civil Judge(J.D.), Pune. Against the said decision the appellant carried the matter in appeal being Civil Appeal No.152 of 1993. During the pendency of the appeal the appellant realised that some of the parties in the appeal have expired. For that purpose some time was prayed. As the appeal abated as against the deceased parties, the appellant preferred application for bringing representatives and legal heirs of the deceased parties on record alongwith the prayer for condonation of delay in filing the said application and setting aside abatement. In substance, the explanation offered by the appellant for delay in taking out the application is that the appellant is an illiterate person who is aged about 90 years. He was dumb and has lost his sight. Besides, he was ignorant of the fact about the death of the concerned parties. It is stated on affidavit that the appellant was residing with his relative for his daily pursuits of life and as such the appellant was unable to seek information and to inform his advocate and instruct him to apply for bringing the heirs on record. For all these reasons, the appellant prayed that delay in filing the application be condoned and

the abatement be set aside. The appellant thus prayed that he be permitted to bring on record heirs and legal representatives of deceased parties namely Respondent No.1 Genu Anyaba Kalokhe, Respondent No.3(a) Muktabai S. Pinjan, Respondent No.3(b) Parubai K. Landge, Respondent No.4 Sonyabai A. Kalokhe. The Lower Court after considering relevant aspect of the matter took the view that the explanation offered by the appellant was unacceptable. The Lower Court found that no sufficient cause has been made out by the appellant. On this finding, the application for condonation of delay as well as for setting aside abatement came to be dismissed. These orders passed on Exh.38 and 39 are subject matter of challenge in the present proceedings in the form of Appeal from Order and Civil Revision Application respectively. As issues involved in both the proceedings are common, are heard and disposed of by this common Judgment.

4. After going through the material on record, the chart would indicate the date of death of the respective respondents and period of delay as is set out in the application preferred by the appellant. The same is reproduced herein below for the sake of brivity which reads thus:

Name of Respondent	Date of death	Period of delay
Respondent No.1 - (Genu Anyaba Kalokhe)	7.10.95	37 months 1 day
Respondent No.3(a) (Muktabai S. Pinjan)	30.10.98	12 months 8 days
Respondent No.3(b) (Parubai K. Landge)	23.10.88	131 months 16days
Respondent No.4 (Sonyabai A. Kalokhe)		121 months 8 days

Who died during the pendency of suit and the fact of death was revealed through Bailiff's report. As per Bailiff's report he died somewhere between 1989-90.

5. The question required to be considered is whether the appellant had made out sufficient cause. As is mentioned earlier the appellant has asserted that he is illiterate person and aged about 90 years and that he is dumb and has lost his sight. These facts are not doubted by the lower court. The Appellant has also stated that he is presently residing with his relative for his daily pursuits of life and is unable to seek information and to inform the advocate and instruct to bring their legal heirs on record in time. Even this fact is not seriously

doubted by the Lower Court. The Lower Court however, has taken into account facts which to my mind were not germane. The lower Court adverted to the fact that the Appellant was given time to take necessary steps in the matter as is seen from Exh.1. It is then observed that on 17th January, 2000, the appellant and his counsel were absent and the suit was dismissed on that date. The suit was later on restored in view of an application Exh.30. It is then stated that on 18th January, 2000, the application was moved for permitting the appellant to bring the legal representatives on record as the appeal was stated to be abated. All these facts to my mind, as recorded by the lower court in no way proceed to hold that the stand taken by the appellant as referred to earlier was dishonest. The Appellant has also stated that he was not aware about the death of the concerned parties. There is no finding recorded by the Court below to the effect that the said stand was dishonest. Indeed, the Court below has taken into account some noting made in Exh.38 that the parties have died. That however, does not mean that the subject application was filed on behalf of the appellant belatedly with purpose. As mentioned earlier the appellant is illiterate person and aged about 90 years. Besides, he is dumb and has

lost his sight. Such a person is obviously expected to be dependant on some other relative and more particularly, for legal advise to be given to him.

6. In the peculiar fact of the present case, I am inclined to take the view that the explanation offered by the appellant that he was unable to take out subject applications in earlier point of time for the reasons beyond his control will have to be accepted and that explanation being sufficient cause the appellant is entitled to succeed. Accordingly, the impugned Judgment and order is set aside and instead the applications preferred by the appellant Exh. 38 and 39 are made absolute. The appellant shall however, carry out necessary amendment in the proceedings before the Lower Court within four weeks from today.

7. The appeal as well as revision application succeed on the above terms. No order as to costs.